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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|---------------------------|--|
| Proceeding | 91215688 |
| Party | Plaintiff Therakos, Inc. |
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| Submission | Opposition/Response to Motion |
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| Date | 05/23/2014 |
| Attachments | Objection to Motion to dismiss.pdf(55463 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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|--------------|-----------------------------|---|
| Applicant: | Maco Pharma société anonyme |) |
| | |) |
| Serial No.: | 85/808,960 |) |
| | |) |
| Filing Date: | June 21, 2013 |) |
| | |) |
| Mark: | THERAFLEX |) |
| | |) |
| Published: | December 3, 2013 |) |
| | |) |

Therakos, Inc., Opposer

v.

Maco Pharma, Applicant

Opposition No. 91215688

**OPPOSER'S OBJECTION TO MOTION TO DISMISS
(and incorporated memorandum of law)**

Opposer has filed an Amended Opposition in response to Applicant's Motion to Dismiss For Failure to State a Claim. Applicant may so once as a matter of course without leave or consent. F.R.Civ.P. 15(a)(1)(B); TBMP § 503.3. The Amended Opposition alleges that Opposer's Mark had become famous prior to Applicant's first use of the Opposed Mark, thus correcting the Oppositions alleged deficiencies. Therefore the Motion to Dismiss is Moot. TBMP § 503.3.

Should the Board consider the Motion further, in addition to directly alleging fame, the Opposition originally (and still) alleges the elements specifically set forth in the Lanham Act that may be considered by the Board in considering whether a mark is

famous. Compare 15 U.S.C.A. 1125(c)(2)A)(i)-(iv) with Paragraphs 2-4 of the Amended Opposition. Further pleading or evidence is not required at this point in the proceedings, and the Applicant's Motion to Dismiss should be denied.

Respectfully submitted,

VERRILL DANA, LLP

Dated: May 23, 2014

By: /James G. Goggin/
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Objection to Motion to Dismiss with incorporated memorandum of law has been served on Applicant on May 23, 2014 by mailing the true and complete copy via First Class Mail, postage prepaid, to:

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